S.B.CIVIL MISC. APPEAL NO.985/2006
(Oriental Insurance Company Ltd. Vs. Smt.Ranjana & ors.)

DATED : 21.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Dinesh Mehta with Mr.Lalit Pareek for the appellant
Mr.Ramjeevan Punia for Mr.Vijay Bishnoi for the claimant-caveators

By way of this appeal, the insurer of the vehicle involved in a fatal accident, having been accorded permission to contest the claim for compensation on merits, seeks to question the award dated 19.04.2006 made by the Motor Accidents Claims Tribunal, Sujangarh in Claim Case No. 51/2003 on its quantification of compensation.

Relevant background facts are that on 02.11.2002 at 9.05 p.m. nearly 3 kilometres from Abu Road on National Highway By-pass, the deceased Prakash Kochar, aged about 35 years, while traveling with his wife and children in a car bearing registration No. GJ 5 AR 6428 that was driven by Ram Pratap (AW-3), received fatal injuries when the car was hit by an on-coming truck bearing registration No. GJ 1 TT 6003. The wife and minor children of the deceased, who too sustained injuries in the accident, joining his parents, made a

claim for compensation on account of accidental death of Shri Prakash Kochar in the sum of Rs. 95,00,000/- against the driver, owner and insurer of the offending truck with the submissions that the deceased was an expert at transport business and was also engaged in finance business earning about Rs. 1,80,000/- per annum. The owner and driver of the truck remaining ex parte, the claim application was contested by the insurer, inter alia, on the grounds that the accident was caused by the negligence of the car driver; that the driver, owner and insurer of the car were necessary parties and the amount claimed towards compensation was baseless.

After framing of necessary issues and taking evidence the learned Judge of the Tribunal held on issues No. 1 & 2 that the non-applicant No. 2 while driving the offending truck in the employment of the truck owner non-applicant No. 3 caused the accident with rash and negligent driving. While rejecting other objections of the insurer in issue No. 4, the learned Judge took quantification of compensation in issue No. 3. With reference to the documentary evidence on record including income tax returns for the deceased for three years, the learned Judge noticed that the deceased was not in permanent employment in any public service or any company; but was managing his own transport business in the name of Manisha Parivahan Private Limited and was receiving salary income from such

and other firms. Learned Judge noticed the salary income of the deceased in the sum of Rs. 1,10,000/- in the year 2000-2001 and Rs. 1,00,000/- in the year 2001-2002. The salary income for the deceased was shown at Rs. 1,20,000/- for the year 2002-2003. Learned Judge took an over all view of the matter and opined that in view of certainties as well as uncertainties, it would be appropriate to take average income of the deceased at Rs. 1,50,000/- per annum and while deducting one-third for his personal expenditure, took the loss of dependency at Rs. 1,00,000/- and capitalized by a multiplier of 16 to arrive at a pecuniary loss figure of Rs. 16,00,000/-. The learned Judge further allowed Rs. 2,500/- for funeral expenses and Rs. 1,000/- for cost of litigation. The Tribunal, therefore, made the award in the sum of Rs, 16,03,500/- and allowed interest @ 6% per annum from the date of filing of claim application; but with stipulation that upon failure of the non-applicant to make payment of the award amount within two months, the claimants shall be entitled to interest @ 9% per annum.

The insurer seeks to contend in this appeal that the award on its quantification of compensation remains excessive where an exorbitant base figure of income has been taken at Rs. 1.50 lacs for a multiplicand of Rs. 1.00 lac without salary certificates having been produced; application of higher

multiplier of 16 also remains unjustified; and the Tribunal has seriously erred in imposing interest @ 9% per annum if payment be not made within two months. The claimants have put appearance in caveat and learned counsel for the claimants has, while supporting the impugned award, submitted that the award made by the Tribunal in this case remains rather on the lower side where substantial future prospects of the deceased, who was less than 35 years in age and was already earning about Rs. 1.20 lacs per annum, have not been considered and multiplier only of 16 has been applied though it ought to have been of 17; and where nothing has been awarded towards non-pecuniary loss. However, learned counsel for the claimants very fairly submitted that the interest allowed by the Tribunal at a rate of 9% per annum in default of payment within two months cannot be justified by him and he would concede that the interest may be allowed @ 6% per annum on the award amount.

Having heard learned counsel for the parties and having examined the impugned award, this court is satisfied that the award on its quantification of compensation cannot be said to be so excessive as to warrant interference by the appellate court in the appeal preferred by the insurer.

The deceased has been shown engaged in extensive transport business and even if the tax return of the year 2002-

2003 is left out of consideration, it is apparent from the returns of prior two financial years that his net income was in the range of about Rs. 1,00,000/- per annum. The ill-fated vehicle he was trevelling in was also of Manisha Parivahan, the company he was managing and earning salary from. Though he was not in any settled employment, but looking to his age at about 35 years, his existing earnings and perceptible potential for enhancement of income in future; and at the same time likelihood of a part of the business income retaining itself to the claimants, the estimate made by the Tribunal taking average income at Rs. 1,50,000/- per annum appears to be very nearly a fair estimate. The multiplicand adopted by the Tribunal after deducting one-third for personal expenditure of the deceased, at Rs. 1,00,000/- cannot be said to be excessive; and the Tribunal has capitalized by a multiplier of 16 that too cannot be said be abnormal or much higher. Further, the Tribunal has not awarded any amount at all towards non-pecuniary loss to the wife 31 years in age, two minor children and the parents of the deceased. However, in the ultimate analysis, where calculation on pecuniary loss has been reasonably liberal, such omission on the part of the Tribunal does not appear to be affecting the amount of compensation finally allowed by the Tribunal.

Having examined the award in its totality, this court is satisfied that impugned award cannot be said to be so excessive as to warrant interference by the appellate court in an appeal by the insurer. The appeal, therefore, deserves to be dismissed. Learned counsel for the claimants has very fairly conceded on the baseless stipulation made by the Tribunal for charging interest @ 9% per annum after two months of the award; and in view of such concession, although the appeal is being dismissed, the award deserves to be re-stated suitably.

As a result of the aforesaid, this appeal fails and is dismissed summarily. However, on the consent of learned counsel for the claimant-caveators, rate of interest as awarded by the Tribunal is modified and it is clarified that the claimants shall be entitled to interest at the rate of 6% per annum from the date of filing of claim application i.e. 06.06.2003. However it shall be required of the appellant to deposit the amount under the modified award within thirty days from today with the Tribunal.

(DINESH MAHESHWARI),J.

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